IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No. 2493 of 2009 (O&M)
Date of Decision: 8.7.2009

Satyawan Singh Yadav .....Appellant

Versus

Ashok Kumar etc. .....Respondents

CORAM: HON'BLE MR. JUSTICE HEMANT GUPTA.

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Shri J.S. Hooda, Advocate, for the appellant.

HEMANT GUPTA, J. (Oral).

Defendant No.2 is in second appeal aggrieved against the judgment and decree passed by the learned first Appellate Court, whereby the suit for specific performance of an agreement to sell dated 28.8.2006, was decreed.

The plaintiff alleges that defendant No.1 Santosh agreed to sell shop in question for a total sale consideration of Rs.16 lacs on 28.8.2006. A sum of Rs.3 lacs was received by defendant No.1 as earnest money. The sale deed was to be executed on or before 30.11.2006. Since, defendant No.1 did not execute the sale deed, the present suit for specific performance was filed on 21.12.2006.

The present appellant filed a suit for permanent injunction against the plaintiff and his father i.e. defendant No.1 on 13.11.2006

claiming possession over the suit property as tenant. On account of the said suit, the present appellant was impleaded as defendant No.2 in the suit for specific performance. The appellant is none else but real brother of defendant No.1.

The learned first Appellate Court has returned a finding of fact that the appellant is not proved to be a tenant over the suit property. It has been found that vide document Exhibit PA, the appellant entered into an agreement with Mohinder Singh for taking on rent shop No.2, Mulana Road, Pataudi with effect from 1.2.2000. The said agreement was furnished along with the application Exhibit PA by defendant No.2 for obtaining telephone connection. The said agreement shows that he is a tenant under Mohinder Singh and not under Santosh, his sister. It has been further found that the appellant has not produced any rent agreement nor any material document like Sale Tax Number and/or receipts of purchase of goods. Still further, in the agreement of sale, there is no recital that the shop in dispute is on rent with the present appellant. The said facts clearly show that the appellant has been introduced, just to defeat the rights of the plaintiff on the basis of the aforesaid agreement.

The arguments raised by learned counsel for the appellant are in the realm of re-appreciation of evidence, which does not fall within the scope of the Regular Second Appeal.

The findings recorded by the learned first Appellate Court are findings of fact, based upon appreciation of evidence. It could not be pointed out that any evidence has been misread or not taken into consideration.

Consequently, I do not find any patent illegality or material

irregularity in the findings recorded or that the findings recorded give rise to any substantial question of law in the present second appeal.

Hence, the present appeal is dismissed.

(HEMANT GUPTA)
JUDGE

8.7.2009
ds